

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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LEWIS S. CLARK and PATRICIA E.	:	Civil Action No. 1:13-cv-03851-RPP
CLARK, Individually and on Behalf of All	:	
Others Similarly Situated,	:	<u>CLASS ACTION</u>
	:	
Plaintiffs,	:	
	:	
vs.	:	
	:	
BARRICK GOLD CORPORATION, et al.,	:	
	:	
Defendants.	:	
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CLEMENT BERNARD, Individually and on	:	Civil Action No. 1:13-04123-RPP
Behalf of All Others Similarly Situated,	:	
	:	<u>CLASS ACTION</u>
Plaintiff,	:	
	:	
vs.	:	
	:	
BARRICK GOLD CORPORATION, et al.,	:	
	:	
Defendants.	:	
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CITY OF BROCKTON RETIREMENT	:	Civil Action No. 1:13-05437-RPP
SYSTEM, Individually and on Behalf of All	:	
Others Similarly Situated,	:	<u>CLASS ACTION</u>
	:	
Plaintiff,	:	
	:	
vs.	:	
	:	
BARRICK GOLD CORPORATION, et al.,	:	
	:	
Defendants.	:	
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MEMORANDUM OF LAW: (1) IN FURTHER SUPPORT OF THE MOTION OF CENTRAL
STATES, SOUTHEAST AND SOUTHWEST AREAS PENSION FUND FOR
APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF SELECTION OF COUNSEL;
AND (2) IN RESPONSE TO THE COMPETING MOTIONS

Institutional investor Central States, Southeast and Southwest Areas Pension Fund (“Central States”) respectfully submits this memorandum of law in further support of its motion to consolidate the related actions, to be appointed lead plaintiff and to have its selection of counsel approved, and in response to the competing motions.

As the Court is aware, there are currently five pending motions by investors seeking to be appointed lead plaintiff in these related actions. The movants ranked by financial interest¹ – *i.e.*, alleged losses – are as follows:

- (1) Union Asset Management AG (“Union”) and LRI Invest S.A. (“LRI”) (the “Union-LRI Group”) (\$65,841,921.29), *see* Dkt. No. 15;
- (2) Central States (\$5,448,049.44), *see* Dkt. No. 21;
- (3) International Painters and Allied Trades Industry Pension Fund, Rhondda Cynon Taf Pension Fund, and Pension Fund and Treasury of Surrey (the “IUPAT-Rhondda-Surrey Group”) (\$4,300,866.00), *see* Dkt. No. 11;
- (4) Retail Wholesale & Department Store Union Local 338 Pension Fund (“Local 338 Pension Fund”) (\$1,698,275.00), *see* Dkt. No. 8; and
- (5) Lewis S. Clark and Patricia E. Clark (the “Clarks”) (\$824,215.00), *see* Dkt. No. 4.

¹ The losses of Central States, the IUPAT-Rhondda-Surrey Group and Local 338 Pension Fund were calculated using the last-in-first-out (“LIFO”) accounting method. Although the amalgam of investors that comprise the IUPAT-Rhondda-Surrey Group claim a larger collective loss than Central States using the first-in-first-out (“FIFO”) method of accounting, this Court has already stated its unequivocal view that, when calculating financial interest, “[i]t’s got to be LIFO.” *Steinberg v. Ericsson LM Telephone Co.*, No 08-CV-9615 (Patterson, J.), Transcript of Proceedings, dated February 15, 2008, at *57 (a copy of which is attached hereto as Exhibit A).

In any event – and aside from its larger LIFO financial interest – Central States’ individual financial interest is still far greater under either LIFO or FIFO than the financial interest of any member of the IUPAT-Rhondda-Surrey Group, which should not be considered in the aggregate. *See id.* at *61 (“I really don’t like this I guess what’s become a habit by plaintiffs’ counsel on these matters to gather clients together and make a joint application in an effort to get lead counselship.”).

After reviewing all the motions, it appears that Central States does not claim the largest financial interest in this litigation.² To the extent there is concern that Union and LRI's pairing and/or structure renders the Union-LRI Group subject to unique defenses of the type that some courts have found to be disqualifying at the lead plaintiff stage, Central States respectfully submits that its motion should be granted since: (i) its financial interest of \$5.4 million exceeds the financial interest of any institutional (or individual) investor that moved to be lead plaintiff; and (ii) Central States is otherwise adequate and typical of the rest of the class.

DATED: August 22, 2013

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[Proposed] Lead Counsel for Plaintiffs

² While Central States initially had some questions about the other motions, those questions have now been satisfactorily answered.

CERTIFICATE OF SERVICE

I hereby certify that on August 22, 2013, I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the attached Electronic Mail Notice List, and I hereby certify that I caused to be mailed the foregoing document or paper via the United States Postal Service to the non-CM/ECF participants indicated on the attached Manual Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on August 22, 2013.

/s/ David A. Rosenfeld
DAVID A. ROSENFELD